

JS 44 (Rev. 03/24)

CIVIL COVER SHEET

The JS 44 civil cover sheet and the information contained herein neither replace nor supplement the filing and service of pleadings or other papers as required by law, except as provided by local rules of court. This form, approved by the Judicial Conference of the United States in September 1974, is required for the use of the Clerk of Court for the purpose of initiating the civil docket sheet. (SEE INSTRUCTIONS ON NEXT PAGE OF THIS FORM.)

I. (a) PLAINTIFFS

Jesus Garcia Calletano

(b) County of Residence of First Listed Plaintiff Pierce
(EXCEPT IN U.S. PLAINTIFF CASES)

(c) Attorneys (Firm Name, Address, and Telephone Number)

Brian Conry, Law Office of Brian Patrick Conry, 1300 SW
6th AVE Ste 310, Portland, Oregon 97201, 503-274-4430

DEFENDANTS

Bondi, Noem, Lyons, Hermosilla, Scott, Scott

County of Residence of First Listed Defendant
(IN U.S. PLAINTIFF CASES ONLY)

NOTE: IN LAND CONDEMNATION CASES, USE THE LOCATION OF
THE TRACT OF LAND INVOLVED.

Attorneys (If Known)

II. BASIS OF JURISDICTION (Place an "X" in One Box Only)

- ☐ 1 U.S. Government Plaintiff ☐ 3 Federal Question (U.S. Government Not a Party)
- ☒ 2 U.S. Government Defendant ☐ 4 Diversity (Indicate Citizenship of Parties in Item III)

III. CITIZENSHIP OF PRINCIPAL PARTIES (Place an "X" in One Box for Plaintiff and One Box for Defendant)

- (For Diversity Cases Only)
- | | | | | | |
|---|----------------------------|----------------------------|---|----------------------------|----------------------------|
| Citizen of This State | ☐ 1 | ☐ 1 | Incorporated or Principal Place of Business In This State | ☐ 4 | ☐ 4 |
| Citizen of Another State | ☐ 2 | ☐ 2 | Incorporated and Principal Place of Business In Another State | ☐ 5 | ☐ 5 |
| Citizen or Subject of a Foreign Country | ☐ 3 | ☐ 3 | Foreign Nation | ☐ 6 | ☐ 6 |

IV. NATURE OF SUIT (Place an "X" in One Box Only)

Click here for: Nature of Suit Code Descriptions.

CONTRACT	TORTS	FORFEITURE/PENALTY	BANKRUPTCY	OTHER STATUTES
☐ 110 Insurance	☐ 310 Airplane	☐ 625 Drug Related Seizure of Property 21 USC 881	☐ 422 Appeal 28 USC 158	☐ 375 False Claims Act
☐ 120 Marine	☐ 315 Airplane Product Liability	☐ 690 Other	☐ 423 Withdrawal 28 USC 157	☐ 376 Qui Tam (31 USC 3729(a))
☐ 130 Miller Act	☐ 320 Assault, Libel & Slander		INTELLECTUAL PROPERTY RIGHTS	☐ 400 State Reapportionment
☐ 140 Negotiable Instrument	☐ 330 Federal Employers' Liability		☐ 820 Copyrights	☐ 410 Antitrust
☐ 150 Recovery of Overpayment & Enforcement of Judgment	☐ 340 Marine		☐ 830 Patent	☐ 430 Banks and Banking
☐ 151 Medicare Act	☐ 345 Marine Product Liability		☐ 835 Patent - Abbreviated New Drug Application	☐ 450 Commerce
☐ 152 Recovery of Defaulted Student Loans (Excludes Veterans)	☐ 350 Motor Vehicle	LABOR	☐ 840 Trademark	☐ 460 Deportation
☐ 153 Recovery of Overpayment of Veteran's Benefits	☐ 355 Motor Vehicle Product Liability	☐ 710 Fair Labor Standards Act	☐ 880 Defend Trade Secrets Act of 2016	☐ 470 Racketeer Influenced and Corrupt Organizations
☐ 160 Stockholders' Suits	☐ 360 Other Personal Injury	☐ 720 Labor/Management Relations	SOCIAL SECURITY	☐ 480 Consumer Credit (15 USC 1681 or 1692)
☐ 190 Other Contract	☐ 362 Personal Injury - Medical Malpractice	☐ 740 Railway Labor Act	☐ 861 HIA (1395ff)	☐ 485 Telephone Consumer Protection Act
☐ 195 Contract Product Liability		☐ 751 Family and Medical Leave Act	☐ 862 Black Lung (923)	☐ 490 Cable/Sat TV
☐ 196 Franchise		☐ 790 Other Labor Litigation	☐ 863 DIWC/DIWW (405(g))	☐ 850 Securities/Commodities/Exchange
		☐ 791 Employee Retirement Income Security Act	☐ 864 SSID Title XVI	☐ 890 Other Statutory Actions
REAL PROPERTY	CIVIL RIGHTS	IMMIGRATION	☐ 865 RSI (405(g))	☐ 891 Agricultural Acts
☐ 210 Land Condemnation	☒ 440 Other Civil Rights	☐ 462 Naturalization Application	FEDERAL TAX SUITS	☐ 893 Environmental Matters
☐ 220 Foreclosure	☐ 441 Voting	☐ 465 Other Immigration Actions	☐ 870 Taxes (U.S. Plaintiff or Defendant)	☐ 895 Freedom of Information Act
☐ 230 Rent Lease & Ejectment	☐ 442 Employment		☐ 871 IRS—Third Party 26 USC 7609	☐ 896 Arbitration
☐ 240 Torts to Land	☐ 443 Housing/Accommodations			☐ 899 Administrative Procedure Act/Review or Appeal of Agency Decision
☐ 245 Tort Product Liability	☐ 445 Amer. w/Disabilities - Employment			☐ 950 Constitutionality of State Statutes
☐ 290 All Other Real Property	☐ 446 Amer. w/Disabilities - Other			
	☐ 448 Education			
	PRISONER PETITIONS			
	☐ 463 Alien Detainees			
	☐ 510 Motions to Vacate Sentence			
	☐ 530 General			
	☐ 535 Death Penalty			
	☐ 540 Mandamus & Other			
	☐ 555 Prison Condition			
	☐ 560 Civil Detainees - Conditions of Confinement			

V. ORIGIN (Place an "X" in One Box Only)

- ☒ 1 Original Proceeding ☐ 2 Removed from State Court ☐ 3 Remanded from Appellate Court ☐ 4 Reinstated or Reopened ☐ 5 Transferred from Another District (specify) ☐ 6 Multidistrict Litigation - Transfer ☐ 8 Multidistrict Litigation - Direct File

VI. CAUSE OF ACTION

Cite the U.S. Civil Statute under which you are filing (Do not cite jurisdictional statutes unless diversity):
U.S. Constitution (5th Amendment), 5 U.S.C. 706, 8 U.S.C. 1226

Brief description of cause:

Challenging Defendant's denial of due process with an in sufficient bond hearing

VII. REQUESTED IN COMPLAINT:

☐ CHECK IF THIS IS A CLASS ACTION UNDER RULE 23, F.R.Cv.P.

DEMAND \$

CHECK YES only if demanded in complaint:

JURY DEMAND: ☐ Yes ☐ No**VIII. RELATED CASE(S) IF ANY**

(See instructions):

JUDGE

DOCKET NUMBER

DATE

SIGNATURE OF ATTORNEY OF RECORD

Jan 29, 2026

/s/ Brian Patrick Conry

FOR OFFICE USE ONLY

RECEIPT #

AMOUNT

APPLYING IFP

JUDGE

MAG. JUDGE

BRIAN PATRICK CONRY, P.C.

OSB #822245

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UNITED STATES DISTRICT COURT
DISTRICT OF WESTERN WASHINGTON
SEATTLE DIVISION

Jesus Garcia-Calletano,
Petitioner

v.

Pamela Bondi, Attorney General of the U.S.,
Kristi Noem, Secretary of the Department of
Homeland Security; US Department of
Homeland Security (DHS); Todd Lyons,
Acting Director of Immigration Customs
Enforcement; Laura Hermosilla, Seattle
Field Office Director, Immigration and
Customs Enforcement and Removal
Operations; U.S. Immigration and Customs
Enforcement (ICE); Rodney S Scott, Acting
Commissioner of Customs and Border
Protection; Bruce Scott, Warden of NWIPC;
and U.S. Customs and Border Protection
Respondents

Case No. 26-342

**PETITION FOR WRIT
OF HABEAS CORPUS**

(28 U.S.C. § 2241)

INTRODUCTION

1. Petitioner filed a habeas in United States District Court case number 2:25-cv-02283-TMC, on November 14, 2025 seeking a bond hearing before the Immigration Court.

2. On November 25, 2025, District Court Judge Cartwright ordered that Laura Hemosillo, et. al. must either release Jesus Garcia-Calletano or provide him with a bond hearing within 14 days.

3. On December 8, 2025, Petitioner had a constitutionally flawed bond hearing before Immigration Judge Tammy Fitting. This is not what Judge Cartwright had ordered. The IJ denied bond after the hearing was held. This hearing had the following deficiencies:

A. The Immigration Judge did not allow Petitioner to testify at the hearing. His attorney had stated, "I don't want to testify today about how he felt. That's something he can do himself today." The Immigration Judge's response was: "Well, his actions speak for themselves. The officers were identified and that's when he locked the doors and they had to break the window."

B. In her findings at the end of the very abbreviated hearing, the Immigration Judge found:

"IJ: alright, given...the Respondent does have time and ties and equities in the United States. Although given his conduct during the apprehension that put himself and the officers at risk I am going to find he is a danger and a flight risk. Now the court only had jurisdiction because of the habeas. So, so I did conduct the bond. Otherwise the court wouldn't have jurisdiction under the precedent Board caselaw of Yahure Hurtado (phonetic)."

1
2 C. The Immigration Judge stated that Petitioner locked the doors when
3 Petitioner heard the officers identify themselves. At this time, the Petitioner
4 states the doors were locked as soon as he saw the officers in the area. He
5 declares that he saw a gun pointed towards him that was "cocked" to fire.
6 Then, his vehicle's driver's side window was broken by the federal officer.
7 He was very afraid at the time and admits his unfortunate TikTok post was a
8 mistake.
9
10
11

12 D. Petitioner submits there was prejudice in the bond hearing process because
13 Petitioner's bond package included character references establishing that
14 Petitioner is a good father, good provider, good person, hard worker, and
15 positive member of the community. See Petitioner's bond
16 pleadings/package, Petitioner's Exhibit 3, pages 1-83. These valuable
17 positive statements about who the Petitioner is and what good things he has
18 done with his life are very strong. This information militates towards an easy
19 finding that he's neither a flight risk nor a danger to society. If he had been
20 able to testify, Petitioner submits the result of the bond hearing may have
21 been different. Petitioner might have been able to overcome the Immigration
22 Judge's mistaken prejudgment that he is a danger to society and flight risk
23 through his explanation that he knows he made a very bad mistake in
24 making his TikTok post that talked about fleeing from "the immigration" if
25
26

1 “the immigration” came after him and his regret for doing this as well as for
2 not being more accommodating to the federal agents when they came to his
3 home to detain/arrest him. At that time, he was understandably very afraid
4 he would lose all that makes life worth living and that, possibly, he would be
5 harmed by these federal agents.
6
7

8 JURISDICTION AND VENUE

9
10 4. This Court has federal question jurisdiction under 28 U.S.C. § 1331 (federal
11 question); 28 U.S.C. § 2241 (federal habeas statute); 8 U.S.C. § 1252(e), and the
12 Suspension Clause of the United States Constitution, U.S. Const. art. I, § 9. I.
13

14 5. Venue is proper under 28 U.S.C. § 1391(e)(1) because Respondents are agencies
15 of the United States and federal officers of the United States acting in their official
16 capacities, and because the Petitioner is present in this district, having been
17 detained at the Northwest Immigration Processing Center in Tacoma, Washington.
18

19 6. For these same reasons, divisional venue is proper under Local Rule 4.
20

21 7. This Court has the authority to grant the relief requested by Petitioners under the
22 Administrative Procedure Act, 5. U.S.C. § 701, et seq.; Rules 57 and 65 of the
23 Federal Rules of Civil Procedure; the Declaratory Judgment Act, 28 U.S.C. §§
24 2201–02; the All Writs Act, 28 U.S.C. § 1651; and the Court’s inherent equitable
25 authority.
26

8. Federal District Courts have habeas jurisdiction under 28 U.S.C. § 2241 to
review Immigration Judge(s)’ bond hearing determinations for constitutional

1 claims and legal error (Leonardo v. Crawford, 646 F.3d 1157 (9th Cir. 2011)). When
2 a habeas court orders a bond hearing as relief for prolonged detention, the court
3 retains jurisdiction to ensure compliance with its mandate (Mau v. Chertoff, 562
4 F.Supp.2d 1107 (D.C.S.D. Cal 2008)).
5

6
7 9. In Mau, the court held that “habeas courts were empowered to make an
8 assessment concerning compliance with their mandates” and that the court “had
9 jurisdiction to review Immigration Judge’s (IJ) bond determination in a hearing
10 held pursuant to court’s prior order granting in part alien’s petition for writ of
11 habeas corpus”.
12
13

14 EXHAUSTION

15 10. Petitioner has exhausted his administrative remedies because he has filed a
16 Notice of Appeal to the Board of Immigration Appeals on his denial of his bond
17 request on January 6, 2026. The bond appeal will take anywhere from
18 approximately three to seven months or longer to be determined by the Board of
19 Immigration Appeals. During this time frame, Petitioner would spend at least until
20 the current individual hearing date of March 6, 2026 in custody. If the order to
21 have a bond hearing had been properly followed by the Immigration Judge,
22 Petitioner submits he would be out of custody as of December 8, 2025. Petitioner’s
23 right to liberty/freedom under the Fifth amendment is implicated by the flawed
24 bond hearing as he suffers irreparable injury due to the denial of his reasonable
25 bond request.
26

1 11. In *Rahman v. Garland*, Case No. 2:24-cv-02132-JHC, filed October 3, 2025
 2 (W.D. Wash 2025), the District Court in Western Washington stated in pertinent
 3 part:
 4

5 ““On habeas review under § 2241, exhaustion is a prudential rather than
 6 jurisdictional requirement.” *Singh v. Holder*, 638 F.3d 1196, 1203 n. 3 (9th
 7 Cir. 2011). That is, the necessity of administrative exhaustion in § 2241
 8 actions is governed by sound judicial discretion. *McCarthy v. Madigan*, 503
 9 U.S. 140, 144 (1992), *superseded by statutory amendment as noted in Booth*
 10 *v. Churner*, 532 U.S. 731, 738 (2001). Nevertheless, “[p]rudential limits, like
 11 jurisdictional limits and limits on venue, are ordinarily not optional.” *Castro-*
 12 *Cortez v. INS*, 239 F.3d 1037, 1047 (9th Cir. 2001), *abrogated on other*
 13 *grounds by Fernandez-Vargas v. Gonzales*, 548 U.S. 30, 35-36, n. 5 (2006).
 14 To determine whether prudential exhaustion is appropriate, courts consider
 15 the following factors, often referred to as the *Puga* factors: (1) whether
 16 “agency expertise makes agency consideration necessary to generate a
 17 proper record and reach a proper decision,” (2) whether “relaxation of the
 18 requirement would encourage the deliberate bypass of the administrative
 19 scheme,” and (3) whether “administrative review is likely to allow the
 20 agency to correct its own mistakes and to preclude the need for judicial
 21 review.” *Puga v. Chertoff*, 488 F.3d 812, 815 (9th Cir.
 22 2007) (quoting *Noriega-Lopez v. Ashcroft*, 335 F.3d 874, 881 (9th Cir.
 23 2003)). That is, under the *Puga* factors, courts should require administrative
 24 exhaustion where it would aid in developing a more complete factual record
 25 for federal judicial review, prevent forum shopping, and conserve federal
 26 judicial resources by permitting agencies to correct their own mistakes
 where they are likely to do so. *Id.*
 Even if the *Puga* factors weigh in favor of prudential exhaustion, a petitioner
 may avoid the requirement by demonstrating one of the
 following *Laing* factors applies in their case: (1) “administrative remedies
 are inadequate or not efficacious,” (2) “pursuit of administrative remedies
 would be a futile gesture,” (3) “irreparable injury will result,” or (4) “the
 administrative proceedings would be void.” *Laing v. Ashcroft*, 370 F.3d 994,
 1000 (9th Cir. 2004) (quoting *S.E.C. v. G.C. George Sec., Inc.*, 637 F.2d 685,
 688 (9th Cir. 1981)); see *Aden v. Nielsen*, No. 2:18-cv-1441-RSL, 2019 WL
 5802013, at *2 (W.D. Wash. Nov. 7, 2019) (“The party moving the court to
 waive prudential exhaustion requirements bears the burden of demonstrating
 that at least one of these *Laing* factors applies.”) (citing *Ortega-Rangel v.*
Sessions, 313 F. Supp. 3d 993, 1000 (N.D. Cal. 2018)).”

1
2 12. Courts may waive the procedural exhaustion requirement where Petitioner
3 demonstrates futility and irreparable harm. Regarding futility, this court need not
4 make factual findings. It need only observe the deprivation of Petitioner's right to
5 testify at his bond hearing, Petitioner's Exhibit 4, page 4, and make a legal finding
6 as to whether he was prejudiced thereby. An additional appellate record is not
7 necessary to address this legal question.
8

9
10 13. Regarding irreparable harm, Petitioner's life and his family's life is in great
11 turmoil at this time due to his detention. As Rachael Behrens states in her
12 psychosocial evaluation summary:
13

14
15 "Mrs. Cortes is a 49 year-old woman who lives in Beaverton, Oregon with
16 her husband and youngest child. Mrs. Cortes presents with a significant
17 trauma history. Based on the results of this mental health evaluation, she
18 meets criteria for PTSD, depression, and anxiety.

19 Mrs. Cortes's PTSD stems from multiple traumatic experiences throughout
20 her life. She is currently experiencing severe anxiety and major depression
21 as a result of her husband's pending immigration case and her fear that he
22 will be deported to Mexico.

23 Mrs. Cortes and Mr. Garcia have worked hard to lead productive lives and
24 founded multiple businesses. Mr. Garcia has assumed a fatherly role for Mrs.
25 Cortes's 3 children, helping raise and provide for them. The couple
26 continues to support Mrs. Cortes's youngest child who still lives at home
and relies on them for emotional and financial support.

Based on Mrs. Cortes's report, her husband provides necessary emotional
and financial stability to her, her children, grandchildren, and her elderly
mother. Her relationship with her husband serves as the most important
protective factor for her psychological well-being.

It is precisely because Mrs. Cortes has grown to depend on her husband for
emotional support that she is presently experiencing such great distress at the
thought of separating from him. Based on Mrs. Cortes's history and
presenting symptoms, prolonged separation from her husband is expected to
harm her mental health.

1 At the same time, relocating to Mexico with her husband would significantly
2 disrupt Mrs. Cortes's life, her businesses, and her ability to support and care
3 for herself and her family. Her physical health may also be impacted due to
4 the increased emotional stress and financial hardship, regardless of whether
5 she remained in the United States or followed her husband to Mexico.

6 Based on Mrs. Cortes's current mental health needs, it is recommended that
7 she seek mental health therapy to treat her PTSD, depression, and anxiety. It
8 is recommended that Mrs. Cortes remain in the United States to facilitate
9 access to treatment.

10 Because her husband's immigration case is one of her primary sources of
11 psychological distress, it is expected that a positive outcome to his case
12 would allow Mrs. Cortes to let go of some of her fears regarding her family's
13 future, and her current mental health symptoms are expected to improve."

14 14. Petitioner submits he's suffering irreparable harm due to these facts.

15 Additionally, additional time in custody will only make things worse for his wife
16 as well, as, for Petitioner and his children. Petitioner's wife is having great
17 difficulty running the businesses that he has created with her help and that she and
18 her children help keep running. However, he's needed there. He's needed in the
19 lives of his wife and his child. *Cf. Perez v. Wolf*, 445 F.Supp.3d 275, 285-86 (N.D.
20 Cal 2020).

21 PARTIES

22 15. Petitioner Jesus Garcia Calletano. He is married to Elizabeth Cortes Villatoro.
23 He has assumed the father role for his wife's three children and has been a loving
24 husband to her. They were married on January 30, 2023 and living together for
25 approximately a decade prior to their marriage. They have known each other since
26 approximately May 2013 and have been together since July 2015. He has no
criminal convictions. His wife and her three children live in Oregon and the

1 youngest child lives with both Petitioner and Elizabeth. Elizabeth and the youngest
2 child, Rebecca, are qualifying relatives on his cancellation of removal for certain
3 non-permanent residents application. Petitioner is currently being held at the
4 NWIPC at 1623 E J Street Suite 5, Tacoma, WA 98421. He has been detained at the
5 NWIPC since on/about November 7, 2025. He has been represented by this
6 counsel before the Immigration Court since December 16, 2025. His bond request
7 made by former counsel was denied with a finding of no bond on December 8,
8 2025. Current counsel filed a Notice of Appeal from that bond denial on January 6,
9 2026. Elizabeth Cortes Villatoro has been diagnosed with PTSD, depression and
10 anxiety by Rachael Behrens, a licensed mental health counselor. Her PTSD,
11 depression and anxiety has been exacerbated by her separation from the Petitioner
12 and her fears about how can she possibly survive without him and about whether
13 or not he will be deported. See Petitioner's Exhibit 11.

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20 16. Respondent Kristi Noem is sued in her official capacity as the Secretary of the
21 U.S. Department of Homeland Security. Secretary Noem is responsible for the
22 administration of U.S. immigration laws.

23
24 17. Respondent Pamela Bondi is sued in her official capacity as the Attorney
25 General of the United States and has responsibility for the conduct and operations
26 of the Department of Justice and all of its officers and personnel, including the
Executive Office for Immigration Review.

1 18. Respondent U.S. Department of Homeland Security (“DHS”) is a federal
2 cabinet-level department of the U.S. government. DHS is an “agency” within the
3 meaning of the APA. 5 U.S.C. § 551(1). It is the largest federal law enforcement
4 agency, and it is responsible for administering U.S. immigration laws under the
5 Immigration and Nationality Act (“INA”) and federal regulations, including those
6 relating to the apprehension, detention, re-detention and removal of noncitizens. Its
7 components include U.S. Immigration and Customs Enforcement (“ICE”) and U.S.
8 Customs and Border Protection (“CBP”).
9

10
11
12 19. Respondent Todd Lyons is sued in his official capacity as the Acting Director
13 of Immigration and Customs Enforcement. Acting Director Lyons oversees all ICE
14 personnel and is a supervisory official responsible for overseeing immigration
15 enforcement, including apprehension, detention, and removal of noncitizens both
16 near the border and in the interior of the United States.
17

18
19 20. Respondent Laura Hermosilla is the Field Office Director for the Seattle Field
20 Office, Immigration and Customs Enforcement and Removal Operations. The
21 Seattle Field Office is responsible for local custody decisions relating to non
22 citizens charged with being removable from the United States, including the arrest,
23 detention, and custody status of noncitizens. The Seattle Field Office’s area of
24 responsibility includes Alaska, Oregon, and Washington, encompassing sites
25 including the Portland and Eugene Field Offices at issue in this complaint.
26

1 21. Respondent U.S. Immigration and Customs Enforcement (“ICE”) is a sub
2 agency of DHS and an “agency” within the meaning of the APA. 5 U.S.C. §
3 551(1). It is responsible for the apprehension, detention, and removal of
4 noncitizens both near the border and in the interior of the United States.
5

6 22. Respondent Rodney S. Scott is sued in his official capacity as the
7 Commissioner of Customs and Border Protection. Mr. Scott oversees all CBP
8 personnel and is responsible for overseeing the apprehension, detention, and
9 removal of noncitizens within 100 air miles of external boundaries of the United
10 States.
11

12 23. Respondent Bruce Scott is sued in his official capacity as the Warden of the
13 NWIPC (formerly known as the NWDC). Ms. Scott oversees all detainees at the
14 NWIPC.
15

16 24. Respondent U.S. Customs and Border Protection (“CBP”) is a sub-agency of
17 DHS and an “agency” within the meaning of the APA. 5 U.S.C. § 551(1). It is
18 responsible for the apprehension, detention, and removal of noncitizens within a
19 “reasonable distance” of any external boundary of the United States, typically
20 defined as 100 air miles.
21

22 LEGAL BACKGROUND

23 25. A due process violation (here, the failure to allow Petitioner to testify) is not an
24 exercise of discretion by the Immigration Judge.
25
26

Deprivation of Due Process: The IJ's Refusal to Allow Petitioner to testify at his bond hearing deprived him of due process, Petitioner was prejudiced

26. In Pouhova v. Holder, 726 F.3d 1007, 1011 (7th Cir. 2013), the Court stated in pertinent part:

“Aliens in removal proceedings are entitled to due process of law under the Fifth Amendment. Reno v. Flores, 507 U.S. 292, 306, 113 S.Ct. 1439, 123 L.Ed.2d 1 (1993). Statutory provisions also impose procedural requirements on removal proceedings. See 8 U.S.C. § 1229a(b)(4). Any proceeding that meets the requirements of the statute also satisfies constitutional due process. Rehman v. Gonzales, 441 F.3d 506, 508 (7th Cir. 2006). Because Pouhova does not challenge the constitutional adequacy of the statutory rights, we focus our analysis on those statutory rights. See Malave v. Holder, 610 F.3d 483, 487 (7th Cir.2010) (focus should be on statutes and relevant regulations).

Under section 1229a(b)(4)(B), an alien in removal proceedings “shall have a reasonable opportunity to examine the evidence against the alien, to present evidence on the alien's own behalf, and to cross-examine witnesses presented by the Government.” An alien who challenges a removal order by claiming a violation of these rights must show both that the proceeding did not meet these requirements and that she was prejudiced. Apouviapseakoda v. Gonzales, 475 F.3d 881, 885 (7th Cir.2007).”

27. In Lopez-Umanzor v. Gonzales, 405 F.3d 1049, 1050 (9th Cir. 2005), the Court stated in pertinent part:

“We grant the petition for review and remand for a new hearing because the IJ refused to allow Petitioner to present relevant expert testimony that bore on Petitioner's credibility, relying instead on his own stereotypical assumptions about domestic violence.”

28. Lopez-Umanzor continues at 1053-54 in pertinent part:

“[T]he IJ had to weigh Petitioner's credibility against the credibility of the detective and the credibility of the absent informant. We rarely disturb the result of that kind of balancing. But here, the IJ's assessment of Petitioner's credibility was skewed by prejudgment, personal speculation, bias, and

1 conjecture; and his refusal to allow Petitioner to challenge those views by
2 presenting expert testimony violated Petitioner's right to due process. We
3 cannot assume that the IJ would have struck the same balance had the
4 weighing begun on an even plane."

5 29. Lopez-Umanzor states at 1056-57:

6 "Due process principles prohibit an IJ from declining to hear relevant
7 testimony because of a prejudgment about the witness's "credibility or the
8 probative value of[the] testimony." Kaur v. Ashcroft, 388 F.3d 734, 737 (9th
9 Cir.2004). "We will grant a petition for review from a BIA decision on due
10 process grounds if the proceeding was so fundamentally unfair that the alien
11 was prevented from reasonably presenting [his or her] case." Reyes-
12 Melendez, 342 F.3d at 1006 (internal quotation marks omitted).^[7] Whether
13 the IJ's actions prevented the introduction of significant testimony is critical
14 to the ultimate question whether the alien had a reasonable opportunity to
15 present evidence. *See, e.g., Sanchez-Cruz*, 255 F.3d at 779 (noting that the IJ
16 "refused to allow the petitioner to introduce evidence that specifically
17 contradicted some of his factual findings"); Colmenar, 210 F.3d at
18 971 (noting that the IJ cut off the alien's testimony regarding the possible
19 political motivations of the attack against him)."

20 30. Colmenar v. INS, 210 F.3d 967, 971 (9th Cir. 2000) also weighed in on due
21 process stating in pertinent part:

22 "We also require an alien to show prejudice, which means that the outcome
23 of the proceeding may have been affected by the alleged
24 violation. *See Campos-Sanchez*, 164 F.3d at 450; Hartooni, 21 F.3d at 340."

25 31. As to prejudice, Colmenar stated at 972:

26 "While these conclusory assertions by themselves are insufficient to support
a claim for asylum, *see Maroufi v. INS*, 772 F.2d 597, 599 (9th Cir.1985), it
is possible that, given a reasonable opportunity to testify, Colmenar could
explain how he reached these conclusions. Indeed, Colmenar states in his
brief that had he been allowed to testify, "he intended to establish that his
attacker, the New People's Army ('NPA'), was motivated by Petitioner's
political opinion" and "that the NPA had imputed a political opinion to him."
Although Colmenar does not explain exactly what evidence he would have
presented to support these assertions, we do not require such an explanation

to find prejudice. See *Martin Perez-LASTOR v. INS.* 208 F.3d 773, 782 (9th Cir.2000) (drawing inference of prejudice despite lack of evidence as to what petitioner would have testified); *Campos-Sanchez*, 164 F.3d at 450 (finding prejudice without requiring petitioner to explain what arguments he would have raised below).^[5] We require the petitioner to show only that the IJ's conduct "potentially [affected] the outcome of the proceedings." *Campos-Sanchez*, 164 F.3d at 450 (quoting *United States v. Cerda-Pena*, 799 F.2d 1374, 1379 (9th Cir.1986)). Colmenar has met this burden. Therefore, he was prejudiced by the lack of a full and fair hearing."

32. *Lopez-Umanzor* concludes at 1059, stating in pertinent part:

"Today's decision by no means refutes the self-evident proposition that one can be both a victim of domestic violence and a drug trafficker. If the agency properly concludes that there is reason to believe an alien is a drug trafficker,^[10] then the alien is ineligible for cancellation of removal under 8 U.S.C. § 1229b(b)(2), period. But, before reaching that conclusion, the agency must give the alien a fair hearing in front of a neutral decision-maker. Because the IJ's disbelief of Petitioner rested on personal speculation, bias, conjecture, and prejudgment, and because he refused to hear testimony that would have challenged those assumptions, we decline to assume that a fair and neutral balancing of the conflicting testimony occurred or to assume that a fair and neutral balancing necessarily would have yielded the same answer. Thus, we conclude that Petitioner has demonstrated prejudice."

33. Courts have long recognized the significance of the habeas statute in protecting individuals from unlawful detention. Its "root principle is that in a civilized society, government must always be accountable to the judiciary for a man's imprisonment; if the imprisonment cannot be shown to conform with the fundamental requirements of law, the individual is entitled to his immediate release." *Fay v. Noia*, 372 U.S. 391, 402 (1963). "It must never be forgotten that the writ of habeas corpus is the precious safeguard of personal liberty and there is no higher duty than to maintain it unimpaired." *Bowen v. Johnston*, 306 U.S. 19, 26 (1939).

1 34. Plaintiff is “in custody” for purposes of § 2241 because he was arrested and is
2 currently detained by Respondents.
3

4 35. Zadvydas v. Davis, et al., 533 U.S. 678, 121 S.Ct. 2491, 150 L.Ed.2d 653, 689-
5 90 (2001). states in pertinent part at 690:
6

7 “Freedom from imprisonment—from government custody, detention or
8 other forms of physical restraint—lies at the heart of the liberty [the Due
9 Process Clause] protects.”

10 **Argument**

11 36. The procedural posture on the Lopez-Umanzor case is that she filed a VAWA
12 (Violence Against Women Act) application that the government is seeking to have
13 denied on the basis that there’s a “reason to believe” she’s a drug trafficker. This is
14 a ground of inadmissibility.
15

16 37. The government’s theory of the case is based on the hearsay statements of an
17 unidentified confidential informant. Lopez Umanzor’s testimony contradicted the
18 informant’s hearsay testimony which was proffered by a law enforcement
19 detective.
20

21 38. Lopez-Umanzor’s counsel sought to introduce expert evidence about the
22 behavior of domestic violence victims which may include the illogical returning of
23 victims to their perpetrators. The legal issue was whether or not the refusal of the
24 Immigration Judge to allow the domestic violence expert to testify was erroneous
25 and denied due process?
26

1 39. Here, the Immigration Judge appears to have pre-judged the Petitioner's
2 "danger" to the community based on his poorly thought out TikTok posting,
3
4 Petitioner's Exhibit 1. Petitioner also failed to extend his hands for handcuffing the
5
6 moment he saw the immigration authorities approaching his vehicle which
7
8 apparently is now considered resisting?

9 40. Here, the Immigration Judge gave no reason to exclude Petitioner's testimony
10
11 other than her assumption that it would be of no value to her already made
12
13 assessment that Petitioner is a danger and a flight risk.

14 41. Petitioner submits the outcome of the proceedings, the Immigration Judge's
15
16 finding that he's a danger to the community and a flight risk, may have changed if
17
18 Petitioner was allowed to testify at the bond hearing. The first thing Petitioner was
19
20 going to do was to apologize for his conduct and, secondly, he was going to
21
22 explain how the shock he felt about his life in the United States possibly ending
23
24 would not allow him to move fast enough for the federal agent to open the door for
25
26 the agent until after the car window had been shattered. The Immigration Judge's
inclination that leaned toward finding Petitioner a danger to society, may have
changed if she had allowed this obviously admissible testimony. Instead, the
Immigration Judge relied on her pre-judgment without hearing relevant evidence
and did not give the Petitioner an opportunity to explain himself.

42. Petitioner also would have testified he posted the offensive post seeking
followers on a TikTok account to "be funny" and to generate more business.

1 Petitioner and his wife explain that everyone knows he's not anyone to be
2 concerned about. Everyone knows he's not a dangerous person. His wife
3 corroborates that she didn't like the posting and that he explained that he was just
4 kidding, joking prior to his arrest by ICE/CBP. He is not joking anymore. Indeed,
5 Petitioner was not a danger to anyone except himself and his family. He humbly
6 requests mercy for himself and his family at this time.
7

8
9 43. Petitioner's behavior can be readily explained by his fear when he observed the
10 immigration agents coming up to his vehicle in his home's driveway. One agent
11 held a "cocked" weapon pointing at Petitioner just prior to breaking the car
12 window. It was reasonable enough for Petitioner to be very afraid, saddened and
13 overwhelmed.
14
15

16
17 44. The remaining evidence, all the good evidence in the bond package, further
18 explained that he's neither a danger nor a flight risk. He's surely neither. He has a
19 strong cancellation of removal case that he can now proceed with whether he is in
20 or out of custody. If cancellation is granted, Petitioner becomes a lawful permanent
21 resident of the United States. The basis for his cancellation case is laid out in
22 Rachael Behrens evaluation of Elizabeth Cortes Villatoro.
23
24

25 45. Behrens opined that Elizabeth Cortes Villatoro would suffer more than the
26 usual amount of hardship when a family member is deported from the U.S. due to
her traumatic past and her dependence on this Petitioner to help her and her child
thrive in their lives.

1 46. Petitioner almost always has been law abiding with the United States. When he
2 entered without a visa over 18 years ago, he did only what millions of
3 undocumented individuals have done in the past to achieve an attempt at a better
4 life here in the United States. His unlawful presence can be forgiven through an I-
5 601 waiver (unlawful presence) at the time his wife, Elizabeth Cortes Villatoro,
6 becomes a U.S. citizen. Petitioner's wife is a lawful permanent resident for over
7 three years. Her Lawful Permanent Residence date is January 11, 2023. After five
8 years as a Lawful Permanent Resident, she will apply to become a U.S. citizen.
9 Once she is a citizen she would apply for an immediately available family visa for
10 Petitioner, her husband. He has been living in the United States since he entered in
11 2007 at the age of 19. He is dedicated to his wife and helping raise her children
12 treating them as his own and keeping them to the best of anyone's ability, healthy
13 and happy. The three children are now the ages of 27, 25 and 19. The youngest
14 child, Rebecca (19), is dependent on her mother.

15 47. The Immigration Judge's failure to allow the Petitioner to testify was
16 prejudicial as it is at least possible he would have been released if the Immigration
17 Judge had allowed him to testify.

18 48. Petitioner has every reason to continue to abide by the law. He's never violated
19 the law except for the unlawful presence he's had since 2007. He's been great for
20 his community. He's hired many employees in the community to help with his
21 construction and/or food businesses.
22
23
24
25
26

FACTUAL BACKGROUND

49. Petitioner provides a declaration to this habeas Court stating he wished to apologize for his conduct at the time he was arrested by the immigration authorities, but that he was scared and froze when he was confronted that morning by several federal agents¹. He was not resisting. He was overwhelmed with dismay realizing his life in the United States might be over and also that he might be physically harmed. Petitioner's declaration, Petitioner's Exhibit 7, states in pertinent part:

"Additionally, at the bond hearing I was prepared to testify and wanted to testify. I had told my attorney prior to the bond hearing that I wanted to testify at the hearing. The Immigration Judge only asked me two questions. She asked me for my name and she asked me later when I got married to my wife. I was not allowed to testify or speak any further at the bond hearing. I would have testified if given the opportunity, first, I wanted to apologize. I made a post on Tiktok where I was joking. By the posting, I was attempting to get more followers on Tiktok. I was joking when I stated that "migra" (immigration) would never catch me."

50. The government evidence in this case is an I-213. The government called no witnesses to testify. The I-213 states in pertinent part:

"At approximately 0908 HRS., Border Patrol Agent Intelligence Chris Young (BPAI) observed a subject enter the [REDACTED] parked in the driveway. The subject that entered [REDACTED] was similar in stature and appearance to GARCIA CALLETANO, Jesus. BORTAC D Team approached [REDACTED] Border Patrol Agent Brian Jubitz approached the passenger window [REDACTED] which was tinted so dark that he could not see inside, and subject [REDACTED] locked the doors and would not open the door or window. Before establishing surveillance on the address BORTAC Team D was shown a video in which GARCIA-CALLETANO, Jesus states

¹ The I 213 shows that there's both ICE officers and CBP agents present

1 that he was in the United States illegally and can never be caught by "the
2 Migra" and that he was going to use [REDACTED] to evade arrest. Supervisory
3 Border Patrol Agent took this information and the extremely dark tint on the
4 window into consideration and instructed BPA William Lindsay to break the
5 driver side window [REDACTED] Once the window was broken, the subject
6 opened the door [REDACTED] and SBPA Serio pulled the subject out who later
7 identified as GARCIA-CALLETANO, Jesus. Supervisory Border Patrol
8 Agent (SBPA) Jesse Serio asked the subject if he was GARCIA-
9 CALLETANO, Jesus and if he was in the United States illegally, the subject
10 indicated that he was by shaking his head yes. SBPA Serio placed GARCIA-
11 CALLETANO, Jesus under arrest at 0908 HRS. GARCIA-CALLETANO,
12 Jesus was transported to ICE ERO Portland, OR Facility for further
13 processing."

14 51. In normal course, appeals on detained bond motions take approximately three
15 to seven months or more. Petitioner will proceed with an Individual Hearing on
16 March 6, 2026 having filed a cancellation of removal application for certain non-
17 permanent residents which may result in his becoming a lawful permanent
18 resident.

19 52. However, if he was released prior to the Individual hearing date, his
20 immigration proceeding would be transferred to the out of custody docket in
21 Portland, Oregon. On information and belief, Petitioner's counsel states his hearing
22 date would be re-set, probably, for years from now. This may allow him an
23 opportunity to apply for consular processing. Given the overwhelmed dockets in
24 the Portland, Oregon EOIR Court, and that currently only one Immigration Judge
25 is hearing cases in Portland, Oregon, this visa processing could be completed well
26 in advance of any individual hearing date being set and heard in Portland, Oregon.

1 53. Petitioner is suffering daily from his continuing incarceration as is his family.

2 The declaration of his wife, Elizabeth Cortes Villatoro, states:

3
4 "Jesus was prepared to testify at the bond hearing and intended to do so. I
5 was at the hearing and was very confused when Jesus didn't testify. He told
6 me how he had planned to apologize to the Judge and show how deeply
7 sorry he was. Jesus was not allowed to talk at all about what happened or
8 how sorry he was for his actions. I did not understand that. I also did not
9 understand why he did not appeal from the denial of the bond by the
10 Immigration Judge. We had expected he would be released from custody and
11 I would pay his bond. This was a horrible day."

12 54. The character references provided to the Immigration Judge as part of the bond
13 package submitted prior to his bond hearing are attached as a part of Petitioner's
14 Exhibit 3.

15 55. Petitioner's two step-daughters provided letters in support. They both speak of
16 his taking care of their mother and supporting the family. They talk about his
17 financial contributions and how he's a hard worker. They describe him as kind and
18 someone who was always there for them. Lorrein discusses in more detail how
19 Petitioner was always there for the big stuff but also for the small stuff. She talks
20 about how close Petitioner is with her children and how much they love their
21 grandpa. Petitioner's step-son, Ramses talks about the positive influence from his
22 step-father and how he wanted to be like him and go into construction and start his
23 own company. Ramses talks about Petitioner using his gifts to contribute to the
24 community including helping refurbish their church at no cost.
25
26

1 56. The other character references from neighbors, fellow church attendees, co-
2 workers and friends all speak of Petitioner's hard work and support for his family.
3 They also largely speak on the amazing impact he's had on his wife and her three
4 children. They all agree that he is not a threat to the community and give many
5 examples of the ways in which he supports and helps the community.
6
7
8

9
10 CLAIMS FOR RELIEF

11 COUNT I

12 Violation of the Fifth Amendment to the U.S. Constitution
13 Substantive Due Process
14 (On Behalf of Petitioner Against All Respondents)

15 57. Petitioner realleges and incorporates by reference each allegation contained in
16 the preceding paragraphs as if set forth fully herein.

17
18 58. Petitioner was deprived of his right to testify at his bond hearing. He was
19 prejudiced thereby. If he would have been allowed to testify, his bond hearing may
20 have led to his release from custody.
21

22 59. Respondents' actions violate the Fifth Amendment of the due process clause of
23 the U.S. Constitution.
24
25
26

PRAYER FOR RELIEF

Petitioners pray that this Court grant the following relief:

- (1) Assume jurisdiction over this matter;
- (2) Declare that the Respondents' conducting a flawed bond hearing, due to the failure to allow Petitioner to testify, violates the Due Process Clause of the Fifth Amendment to the United States Constitution;
- (3) Declare that Petitioner was prejudiced by the refusal of the Immigration Judge to allow him to testify at this bond hearing;
- (4) Issue an order releasing Petitioner from custody under any appropriate order of supervision with conditions including payment of up to a \$10,000 bond;
- (5) In the alternative, order a bond hearing within the next five days at which the Immigration Judge would be directed to allow the Petitioner to testify at his bond hearing and present any relevant evidence;
- (6) Prohibit the Respondents from re-detaining Petitioner without a pre-deprivation hearing where Respondents would have the burden of proving Petitioner is either a flight risk or a danger to society before a neutral arbitrator.
- (7) Issue an order that the Immigration authorities transport Petitioner for fingerprinting from the NWIPC prior to his March 6, 2026 Individual hearing date if his biometrics are not current and he is not released from custody prior to that time.

1 (8) Award Petitioners costs of suit and reasonable attorneys' fees and expenses
2 pursuant to any applicable statute or regulation; and
3

4 (9) Grant such further relief as the Court deems just, equitable, and proper.
5

6
7 Dated this 29th day of January, 2026
8

9 Respectfully Submitted,

10 /s/Brian Patrick Conry

11 Brian Patrick Conry

12 Attorney for Petitioner

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14 Portland, Oregon 97201

15 503 274 4430

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